



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार, 16 जनवरी, 1997/26 पौष, 1918

हिमाचल प्रदेश सरकार

अधिसूचना

शिमला-171002, 3 जनवरी, 1997

संख्या 13-14/94-ई0एल0एम0.—निर्वाचन आयोग की अधिसूचना संख्या 82/हि0 प्र0-वि0 स0/6/94; दिनांक 27 दिसम्बर, 1996 तदनुसार 2 पौष, 1918 (शक) अंग्रेजी रूपान्तर सहित, जिसमें हिमाचल प्रदेश उच्च न्यायालय, शिमला, का निर्वाचन अर्जी संख्या 6 वर्ष 1994 का निर्णय निहित है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आवेद्य से,

डा० सुतानू बिहुरिया,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली,
23 दिसम्बर, 1996
तारीख—
2 पौष, 1918 (शक)

संख्या 82/हि0 प्र0-वि0स0/6/94.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1994 की अर्जी संख्या 6 में हिमाचल प्रदेश उच्च न्यायालय के तारीख 7 नवम्बर, 1996 के निर्णय को एतद्वारा प्रकाशित करता है।

आदेश से,

धनश्याम खोहर,
सचिव,
भारत निर्वाचन आयोग।

ELECTION DEPARTMENT

NOTIFICATION

Shimla-171002, the 4th January, 1997

No. 2-19/88-ELN.—In pursuance of Government of Himachal Pradesh Finance (Regulation) Department's Office Memorandum No. F-5-6/71-Fin (Reg.) dated the 7th May, 1979 and in exercise of the powers vested in me under rule 1.17 and 1.26 of Himachal Pradesh Financial Rules, 1971, Vol. I, read with rule 2.16 of the Himachal Pradesh Budget Manual 1971, I, hereby declare Assistant Commissioner to Deputy Commissioner, Nahan (Gazetted-I) as Drawing and Disbursing Officer in respect of following Head of Account for carrying out the election work in Sirmour District:—

Mator head of Account ; 2015—Elections (Non-Plan) Voted

I further declare that the Assistant Commissioner, Deputy Commissioner, Nahan will also function as Controlling Officer in respect of officer and staff of Election Department also Class I, II, III and IV employees of various Departments deployed for revision of electoral rolls, issue of Photo Identity Cards to voters, conduct of Lok Sabha and Vidhan Sabha elections of sirmour District or the purpose of "TRAVELLING ALLOWANCE".

I further declare the District Election Officer (Deputy Commissioner) Sirmour at Nahan as Controlling Officer for the purpose of contingencies.

The powers of Drawing and Disbursing/Controlling Officer delegated to the Additional District Magistrate, Sirmour at Nahan *vide* this Department's Notification of even number. dated 10th May, 1996 are hereby withdrawn with immediate effect.

Dr. S. BEHURIA,
Secretary.

ELECTION COMMISSION OF INDIA

NOTIFICATION

23rd December, 1996
New Delhi, the 2 Pausa, 1918 (Saka)

No. 82/HP-LA/6/94.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Judgement dated 7th November, 1996 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 6 of 1994.

By order,
GHANSHYAM KHOHAR,
Secretary,
Election Commission of India.

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

ELECTION PETITION NO. 6 OF 1994

Misc. Petition No.
Writ Petition No.

Appeal No.
Revision Petition No.
Civil Suit No.

Date of decision 7-11-1996

Kanwar Durga Chand

.. Petitioner.

Versus

Shri Ravinder Singh (Ravi)

.. Respondent.

Coram :

The Hon'ble Mr. Justice
The Hon'ble Mr. Justice
The Hon'ble Mr. Justice

M. Srinivasan, C. J.
P. K. Palli, J.

Whether approved for reporting ?

For the Applicant (s) Petitioner (s)

Pt. Om Parkash Sharma,
Advocate.

For the Respondent (s)

Mr. R. K. Sharma, Advocate.

M. Srinivasan, C. J. :

This matter has come before us on a reference by the learned Single Judge of this Court, who found it not possible to agree with the view expressed by another learned Judge of this Court in an earlier election petition. The question which arises for consideration is whether the copy of the election petition, Ex. RW-2/A, in which the name and designation of the Oath Commissioner, who attested the affidavit annexed with the election petition is not mentioned, is a true copy as envisaged under Sub Section (3) of Section 81 of the Representation of People Act, 1951.

May be allowed to see the judgement.

2. The facts, which are relevant for the purpose of this case are as follow :

3. The election of the respondent to the 41st Thural Constituency of Himachal Pradesh Legislative Assembly has been challenged on various grounds including corrupt practices. Seven issues were framed, the first of which reads as follows :

"1. Whether the copy of the Election Petition as supplied to the answering respondent is not a true copy of the Election Petition ? If so, its effect ?"

4. It is not necessary for us to set out the other issues. The copy served on the counsel for respondent is marked as Ex. RW-2/A. In the original election petition, the affidavit filed in support thereof is attested by one Nishi Goel, Oath Commissioner and Advocate, High Court of Himachal Pradesh, Shimla but the copy supplied to the counsel for the respondent did not contain those particulars. The relevant part of the copy read as follows :

"Solemnly affirmed by Kanwar Durga Chand, petitioner, at Shimla this 10th day of January, 1994.

Before me,
Sd/-
Commissioner of Oath."

5. Apart from that nothing else is found in the copy to inform the respondent as to the authority, who attested the original affidavit. The respondent raised the preliminary objection, which is the subject matter of Issue No. 1.

6. The learned Single Judge heard counsel on both sides and after referring to the various rulings on the point of different High Courts and that of the Supreme Court expressed her inability to agree with the decision of the learned Judge of this Court in Election Petition No. 2 of 1994 in *Ram Nath Sharma vs. Ram Dass Malangar and others* dated 21-6-1994. The learned Single Judge has placed reliance on the judgments of Bombay High Court in *Purshottam vs. Returning Officer, Amravati and others*, A. I. R. 1992 Bombay 227. Punjab and Haryana High Court in *Iqbal Singh vs. Avtar Singh and others* (1993-2) P. L. R. 255, *Boota Singh vs. Sher Singh and others*, A. I. R. 1994- Punjab and Haryana 32 and also that of Rajasthan High Court in *Dr. (Smt.) Shipra vs. Shri Shanti Lal*, A.I.R. 1995 Rajasthan 50. The learned Judge has expressed the opinion that the copy supplied to the respondent did not meet the requirements of sub section (3) of Section 81 of the Representation of People Act and as a consequence, the election petition deserved to be dismissed. However, keeping in mind the judicial propriety, the learned Judge has made a reference of the matter to a Larger Bench and thus, it has come before us.

7. We have heard counsel on both sides at length. Our task has become every easy in view of the late pronouncement of the Supreme Court. We have referred to the fact that the learned Single Judge had placed reliance on the judgment of the Rajasthan High Court in *Dr. (Smt.) Shipra vs. Shri Shanti Lal*, A. I. R. 1995 Rajasthan 50. That decision was challenged in appeal before the Supreme Court and the appeal was dismissed on 3-4-1996 vide *Dr. Shipra (Smt.) and others vs. Shanti Lal Kholwal and others*, (1996) 5 S.C.C. 181. Along with the said appeal, two other appeals against the judgment of the same High Court and one appeal against the judgment of Madhya Pradesh High Court were heard. The judgment of the Supreme Court was rendered by a three Judges' Bench. Hon'ble Mr Justice K. Ramaswamy after referring to the meaning of the expression 'true copy' observed as follows.—

"It would thus be clear that a true copy is a transcript identical to or substitute to the original but not absolutely exact copy. But nobody can by any possibility, misunderstand it to be not a true copy. It is seen that the test, as stated earlier, is whether

any variation from the original is calculated to mislead an ordinary person. When a petitioner is enjoined to file an election petition accompanied by an affidavit duly sworn by the applicant duly verifying diverse allegations of corrupt practices imputed to the returned candidate and attested by the prescribed authority it would be obvious that the statutes intended that it shall be performed in the same manner as prescribed in Form 25 read with Rule 94-A of the Rules. The attestation of the affidavit by the prescribed authority, therefore, is an integral part of the election petition. The question therefore, is whether copy of the affidavit supplied to the respondent without the attestation portion contained in it (though contained in the original affidavit) can be considered to be a 'true copy'?"

8. The learned Judge proceeded to refer to the ruling of the Supreme Court in *Mithilesh Kumar Pandey vs. Baidyanath Yadav*, (1984) 2 S. C. C. 1 and several other judgments of that Court. Then he referred to the judgment of the Bombay High Court in *Purushottam vs. Returning Officer*, A.I.R. 1992 Bombay 227. The learned Judge said thus :

"11. In *Purushottam vs. Returning Officer*, A.I.R. 1992 Bombay 227, present question had directly arisen. In that case the copy contained omission of vital nature, viz., the attestation by the prescribed authority. The High Court had held that the concept of substantial compliance cannot be extended to overlook serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy. We approve of the above view. Verification by a Notary or any other prescribed authority is a vital act which assures that the election petitioner had affirmed before the Notary etc. that the statement containing imputation of corrupt practices was duly and solemnly verified to be correct statement to the best of his knowledge or information as specified in the election petition and the affidavit filed in support thereof; that reinforces the assertions. Thus affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the returned candidate would not be misled in his understanding that imputation of corrupt practices was solemnly affirmed or duly verified before the prescribed authority. For that purpose, Form 25 mandates verification before the prescribed authority. The object appears to be that the returned candidate is not misled that it was not duly verified. The concept of substantial compliance of filing the original with the election petition and the omission thereof in the copy supplied to the returned candidate as true copy cannot be said to be a curable irregularity. Allegations of corrupt practices are very serious imputations which, if proved, would entail civil consequences of declaring that he became disqualified for election for a maximum period of six years under Section 8-A, apart from conviction under Section 136(2). Therefore, compliance of the statutory requirement is an integral part of the election petition and true copy supplied to the returned candidate should as a sine qua non contain the due verification and attestation by the prescribed authority and certified to be true copy by the election petitioner in his/her own signature. The principle of substantial compliance cannot be accepted in the fact situation".

9. Hon'ble Mr Justice Bharucha in his supplementing judgment observed as follows :

"An affidavit must be sworn or affirmed in the manner required by law, or it is not an affidavit. The document purporting to be a true copy of the election petition furnished by the appellant to the respondent gave the impression that the appellant's affidavit supporting his allegations of corrupt practice had not been sworn or affirmed and was, therefore, no affidavit at all; it misled in a material particular and its supply was, as the High Court held, fatal to the election petition".

10. Hon'ble Mr Justice Paripoornan in his supplementing judgment after setting out the provisions of Section; 81, 83 and 86 of the Representation of the People Act, 1951 and referring to the earlier judgments of the Supreme Court also referred to the judgment of the Bombay High Court in *Purshottam's* case, A. I. R. 1992 Bombay 227 and observed thus :

"22. Quazi, J. in *Purushottam v. Returning Officer*, A. I. R. 1992 Bombay 227 has, after referring to the above decision of this Court along with the other decisions and an unreported decision of the Bombay High Court in *Election Petition No. 2 of 1990*, held that the absence of the endorsement of the Notary on the copy of the affidavit accompanying the election petition renders the copy as not conforming to Section 81 (3) of the Act, and the election Petition is liable to be dismissed for the said omission".

"23. In my opinion, the above decision lays down the law correctly and is squarely applicable herein. In particular, the following observations in the unreported decision of the Bombay High Court in *Election Petition No. 2 of 1990* quoted in para 12 of the judgment of Quazi, J. are instructive and furnish sufficient basis to reach the said conclusion. The observations are to the following effect :

"50. That, however, leaves one question to be considered and it is whether the copy of the endorsement 'Affirmed and signed before me' by the Notary, designation of the Notary and the stamped endorsement regarding the affirmation which he made at the time of the making of the affidavit, were necessary and essential parts of the document and if these are omitted from the copy furnished, that would render the copy, which is furnished, incomplete, and the defect would be so glaring as to negative the inference that the copy was furnished. When Form No. 25 prescribes a particular form and the copy of that affidavit is to be furnished, it seems to me that the endorsement of the authority before whom the affirmation was made, together with his official designation and the stamped endorsement, are also essential and without them the copy cannot be regarded as true copy. It is not merely the contents of the affidavit which brings sanctity to the document but the affirmation that has been made, and without the affirmation, it can be no affidavit at all. I am not impressed by the submission of Shri Bobde that these endorsements were merely formal, because what is required under the proviso to sub-Section (1) of Section 83 is an affidavit, and it should be possible for the respondent to ascertain whether, in fact, the contents were sworn, affirmed and signed before the Magistrate or the Notary or the person in whose presence the swearing of the affirmation was made, had authority to administer is said to have oath. The respondent will not be in a position to point out that the person, who administered the oath, was not in existence or had no authority to administer the oath or that the signature and the endorsement on the document purported to have been made by the alleged authority were fake. If the copies of the affidavit are not faithful and do not include these endorsements, a valuable right of the respondent is taken away and considering the purpose which the copy of the endorsement would serve, it cannot be said that this portion would not be integral part of the affidavit. Since these details form an integral part of the affidavit, furnishing a copy without that portion would not be furnishing a complete copy, and in that event, merely because the returned candidate made an endorsement that it was a true copy, it cannot be regarded as a true copy. Considering the purpose that is to be served, I do not think that the lapse can be regarded as inconsequential."

(emphasis supplied).

"24. With respect, I would adopt the said observations as my own. The appeals deserve to be dismissed".

11. Thus, the matter has been placed beyond doubt by the Supreme Court and it is not necessary for us to add anything further on our own.

12. Learned counsel for the petitioner, however, tried to make a distinction between the facts of the present case and the facts of the cases which went to the Supreme Court. According to learned counsel, in the cases, which went to the Supreme Court, the affidavits did not contain attestation part, whereas the original affidavit in this case did contain attestation part. We are unable to accept this distinction. It is evident from paragraph 8 of the judgment of the Supreme Court, which we have already extracted, that the question which arose before the Supreme Court is the same as that has arisen before us now and the facts are similar.

13. It is next argued by learned counsel that the Rules and Form prescribed do not require the name and designation of the attesting officer to be furnished. Rule 94-A of the Conduct of Elections Rules, 1961 reads as follows:

"94-A. Form of affidavit to be filed with Election Petition.—The affidavit referred to in the proviso to sub-section (1) of Section 83 shall be sworn before a Magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25."

14. In Form 25, the relevant part provides for the signature of the attesting authority above the words 'Before me'. Below the words 'Before me' the designation is noted as Magistrate of the first class/Notary/Commissioner of Oaths. It is the duty of the attesting officer to clearly mention the designation whatever it may be. The signature will certainly contain his name. When the true copy of the affidavit is prepared and supplied to the opposite party, it should necessarily contain not only the name of the attesting officer but also the designation, as he has stated already in this cases the copy supplied to the respondent's counsel does not make a reference whatever to the attestation part.

15. In the circumstances, we have no hesitation to hold that the requirement of Section 81 (3) of the Representation of People Act have not been complied with. In this case, we have to hold that the judgment of this Court in *Ram Nath Sharma vs. Ram Dass Malangar and others* in Election Petition No. 2 of 1994 is no longer good law. The Election Petition deserves to be dismissed in view of the provisions of Section 86 (1) of the Representation of People Act.

16. Consequently we dismiss this Election Petition upholding the preliminary objection raised by the respondent. There will be no orders as to costs.

Sd/-

(M. SRINIVASAN),
Chief Justice.

(P. K. PALLI).
Judge.

7th November, 1996.

Attested
Sd/-

Superintendent (Judicial) High Court of H. P., Shimla.

